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FILED

OCT 23 1997

**Commission on
Judicial Performance**

10 STATE OF CALIFORNIA

11 BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

12 INQUIRY CONCERNING JUDGE
13 CHRISTOPHER J. SHELDON,
14 No. 142.

) **VERIFIED ANSWER TO NOTICE OF**
) **FORMAL PROCEEDINGS**
)
)

15 This is Judge Christopher J. Sheldon's answer to the Notice of Formal Proceedings filed
16 on September 23, 1997. Judge Sheldon is a Judge of the Riverside County Superior Court, and
17 has held that position from January 21, 1992 until the present. Judge Sheldon denies any willful
18 misconduct in office, conduct prejudicial to the administration of justice which may bring the
19 judicial office into disrepute, or improper action within the meaning of Article VI, section 18 of
20 the California Constitution. At all times during his tenure in office, he has attempted to act in a
21 manner which is consistent with the proper and efficient administration of justice and in a manner
22 which is fair, non-prejudicial, and responsible to all litigants, to the people in Riverside County,
23 and to the people of the State of California.

24 1. Judge Sheldon denies that he conducted court business in violation of proper judicial
25 procedures.

26 2. Judge Sheldon admits that he handled a misdemeanor pretrial calendar during the time
27 period of "approximately July 1995 through February 1996." Judge Sheldon admits that under his
28 method of presiding over the misdemeanor pretrial calendar during the dates referenced, he often
was not physically present on the Bench in the courtroom. However, during the overwhelming

majority of the time of that calendar, during which defendants' attorneys were meeting with their clients and defendants' attorneys and prosecutors were negotiating settled dispositions of cases, Judge Sheldon was in chambers or on courthouse premises. He was available for, and personally handled, matters for which a settled disposition was not possible or had become problematic. On occasion, conferences in Judge Sheldon's chambers were necessary and were held. In sum, he denies that his routine "physical" absence from the courtroom constituted a "legal" absence during the misdemeanor pretrial calendar.

3. Under Judge Sheldon's direction and supervision (and during the time at issue), court clerks recorded hearing dates, continuances, and settled pleas. Pursuant to Judge Sheldon's directions, the clerks' recordations were ministerial actions on their part and involved no use of their own discretion. The decision to accept the settled pleas in this nature and by this method was made by Judge Sheldon and was not delegated to the clerks or anyone else.

4. Judge Sheldon directed clerks, in some instances, to stamp his signature on constitutional rights waiver forms in misdemeanor cases where the defendant had signed the same. In some instances, Judge Sheldon personally signed constitutional rights waiver forms after the pretrial calendar was concluded. It is possible that in a rare instance such a form was unsigned and unstamped, but the Notice of Formal Proceedings identifies no such cases for Judge Sheldon's response and Judge Sheldon denies that a judge's signature is necessary.

5. During the time period in question, Judge Sheldon did occasionally jog on stairs at the courthouse facility. Judge Sheldon recalls that such was done usually during the lunch break or after the afternoon misdemeanor pretrial calendar was concluded. Judge Sheldon acknowledges it was possible that such may have also occurred on a few isolated occasions during times that briefly overlapped with portions of the misdemeanor pretrial calendar. However, Judge Sheldon denies recalling any specific instance or date on which this occurred. He also is unable to determine with any certainty the frequency of any such instances.

6. Judge Sheldon denies that he abandoned his role in the adjudicative process and demonstrated any disregard for his obligation to diligently perform the duties of judicial office.

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FIRST AFFIRMATIVE DEFENSE

(Lack of Subject Matter Jurisdiction)

Judge Sheldon asserts the Commission lacks subject matter jurisdiction to bring all or some of the Counts or their sub-parts, as such concern matters of pure legal error or of purely administrative matters exclusively reserved for the judicial branch of State government.

SECOND AFFIRMATIVE DEFENSE

(Failure to Allege Charges Involving Violations of Judicial Ethics)

Judge Sheldon alleges that the charges brought against him, even if proven to be factually correct, fail to allege violations of the Code of Judicial Conduct, California statutes, or California constitutional provisions. As such, this inquiry constitutes an unlawful inquiry.

THIRD AFFIRMATIVE DEFENSE

(Vagueness of Charges)

Judge Sheldon alleges that some or all of the charges or their sub-parts are vague to the point of denying Judge Sheldon the opportunity to adequately defend against the charges. Moreover, no pleading vehicle exists whereby Judge Sheldon may move for a more definite statement. This violates Judge Sheldon’s due process rights.

FOURTH AFFIRMATIVE DEFENSE

(Conduct was Proper in the Judge’s Representative Capacity)

Judge Sheldon asserts that he is a representative of the people who elected him to judicial office and/or for whom he was appointed to serve. He asserts that no canon of judicial conduct may interfere with his duties as a representative to his constituents.

FIFTH AFFIRMATIVE DEFENSE

(Violation of Due Process)

Judge Sheldon alleges that the Commission’s procedure whereby it investigates the charges on its own motion, drafts the charges against the judge, determines if evidence supports the charge, prosecutes the charge, and imposes discipline on the judge with the judge being given no right of mandatory appellate review, violates federal and State due process guarantees. Judge Sheldon further asserts that ex parte communications between the Examiners and the Commission

1 and/or its staff violate the investigated judge's due process rights. Judge Sheldon further asserts
2 that the Commission's act of withholding any portion of its file on the investigated judge denies
3 the judge with an opportunity to fully defend against the charges and, accordingly, violates that
4 judge's due process rights. Judge Sheldon asserts that such denial of his constitutional due
5 process rights is being knowingly and willfully undertaken by the Commission, and not committed
6 on the basis of mere negligence.

7 **SIXTH AFFIRMATIVE DEFENSE**

8 **(Improper Denial of Discovery Rights)**

9 Judge Sheldon alleges that the Rules of Court governing discovery in a judicial misconduct
10 case are legally insufficient and discriminatory. He alleges the discovery procedures which are
11 allowed are insufficient to permit an adequate opportunity to defend against the charges. He
12 further alleges that such rules which give the Commission a "work product" privilege not
13 available to the judge violate the equal protection clause of federal and State constitutions.

14 **SEVENTH AFFIRMATIVE DEFENSE**

15 **(Violation of Separation of Powers Doctrine and "The Principle of Check")**

16 Judge Sheldon alleges that rules giving the Commission (with its non-judge, non-lawyer
17 majority) the power to discipline a judge, with the judge having no right of mandatory appellate
18 review, violate the State separation of powers doctrine and the "principle of check."

19 **EIGHTH AFFIRMATIVE DEFENSE**

20 **(Mitigation)**

21 Judge Sheldon alleges that other matters not pled as facts in the Notice of Formal
22 Proceedings render the charges invalid and/or serve to mitigate against any act which could
23 otherwise be characterized as judicial misconduct.

24 **NINTH AFFIRMATIVE DEFENSE**

25 **(Illegality of Formal Proceedings)**

26 Issuance by the Commission of a Notice of Formal Proceedings against Judge Sheldon is
27 illegal under the Commission's self-adopted rules. After its preliminary investigation, the
28 Commission did not concluded that formal proceedings should be instituted. Judge Sheldon,

1 pursuant to court rule, did not demand formal proceedings. Accordingly, Judge Sheldon is
2 cooperating and participating in these proceedings under legal protest.

3 **TENTH AFFIRMATIVE DEFENSE**

4 **(Failure to Identify Complainants)**

5 To date, the Commission has failed to identify to Judge Sheldon or his counsel the identity
6 or identities of complainants to the Commission about Judge Sheldon, nor has the Commission
7 produced any written complaints. The Commission has not denied the existence of any such
8 complainants or complaints. Such a lack of disclosure denies Judge Sheldon's due process rights
9 and prejudices his ability to present an adequate defense to the allegations.

10 Dated: October 22, 1997

LEWIS, D'AMATO, BRISBOIS & BISGAARD LLP
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11
12
13 By:


JAMES E. FRIEDHOFFER

Attorneys for Respondent,
THE HONORABLE CHRISTOPHER J. SHELDON

VERIFICATION

I, Christopher J. Sheldon, have read the foregoing Answer to Notice of Formal Proceedings in Inquiry No. 142 and know its content. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed at Indio, California on October 22, 1997.



Christopher J. Sheldon
Judge of the Superior Court

PROOF OF SERVICE

CASE NAME: INQUIRY CONCERNING A JUDGE, NO. 142 (Sheldon)
CASE NUMBER: N/A
COURT: BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

I, Lesli D. Miller, the undersigned, am a citizen of the United States, over the age of 18 years, and not a party to or interested in the within action. I am an employee of the Law Offices of Lewis, D'Amato, Brisbois & Bisgaard LLP and my business address is 550 West "C" Street, Suite 800, San Diego, California 92101.

On October 22, 1997, I served the attached:

VERIFIED ANSWER TO NOTICE OF FORMAL PROCEEDINGS

on all interested parties in said cause, by delivering a true copy as follows:

☒ (By Mail) I placed the original or a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid. I deposited said envelope in the United States Mail in the City and County of San Diego, California.

I am readily familiar with our law firm's practice for collection and processing of correspondence for mailing with the United States Postal Service, that this mailing will be deposited with the United States Postal Service on this date in the ordinary course of business and that I sealed and placed each envelope for collection and mailing on this date following ordinary business practices.


☒ (By Federal Express) I sent the original or a true copy thereof enclosed in a sealed envelope to be delivered to Federal Express for overnight service to the office(s) of the addressee(s).

☒ (By Facsimile) I sent a true copy thereof via telephone facsimile transmission to the following FAX numbers and a hard copy to follow by mail.

Each Envelope Was Addressed As Follows:

SEE ATTACHED SERVICE LIST

Executed on October 22, 1997, at San Diego, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



LESLI D. MILLER

CASE NAME: INQUIRY CONCERNING A JUDGE, NO. 142 (Sheldon)
CASE NUMBER: N/A
COURT: BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

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